

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(February 6, 1997 Session)

JAMES CLIFFORD TATUM,)
)
Plaintiff-Appellee,)
)
Vs.) No. 02S01-9609-CH-00079
)
METHODIST HOSPITAL OF)
DYERSBURG,)
)
Defendant-Appellee)
)
and)
)
SUE ANN HEAD, DIRECTOR OF)
THE DIVISION OF WORKERS')
COMPENSATION, TENNESSEE)
DEPARTMENT OF LABOR)
SECOND INJURY FUND)
)
Defendant-Appellant.)

FILED

April 17, 1997

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Appellate Court Clerk

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MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Leonard W. Martin, Special Judge

JUDGMENTS OF TRIAL COURT
SET ASIDE; CASE REMANDED
FOR NEW TRIAL.

Martin, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The director of the Workers' Compensation Division of Tennessee Department of Labor, as trustee for the Second Injury Fund (Second Injury Fund), appeals from the decision of the trial court. The court approved, over the objection of the Second Injury Fund, a settlement agreement between the employee, James Clifford Tatum, and the employer, Methodist Health Systems (Methodist Hospital of Dyersburg, Inc.), limiting the employer's liability to benefits based on 31 per cent (31%) permanent partial disability to the whole body. The claim against the Second Injury Fund was reserved until trial. The trial of the case was between the employee and the Second Injury Fund. Subsequently, at trial, the trial court found the employee to be permanently and totally disabled and held the Second Injury Fund liable for 60 per cent (60%) of that total disability. Because the court erred in approving the settlement over the objection of the Second Injury Fund, the panel concludes that both judgments should be set aside, and the case remanded for a new trial on all issues.

The trial court recognized its error and stated in its memorandum opinion of April 29, 1996, as follows:

"This settlement was approved over the objection of the Fund. In retrospect, the Court should not have approved the settlement over the objection of the Fund, but should have tried both claims together."

However, the trial court apparently believed that it had cured its error. We conclude otherwise. In a very recent case decided by the Supreme Court on December 23, 1996, the court reasoned as follows:

Here, the trial court approved a settlement concerning the

issue of disability caused by the subsequent injury though a party, the Second Injury Fund, did not agree to its terms. That determination cannot be made, over the objection of the Second Injury Fund, by agreement between the employee and the employer

Because the Second Injury Fund has not settled the liability issue by agreement, it is entitled to “submit the entire matter for determination to the judge . . . to hear and determine the issues and render and enforce judgment. Tenn. Code Ann. §50-6-225(a)(1) and (c)(1) (Supp. 1996). The Second Injury Fund has the right to have “the entire matter” litigated among all of the interested parties. The right to have disputed issues litigated between all of the parties in workers’ compensation cases has previously been recognized - this Court has held that the statutory requirement that the Second Injury Fund be given notice and made a party to proceedings “is a clear indication that the Legislature intended that an employee’s claim against the Second Injury Fund is to be litigated at the same time as the employee’s claim against his employer. **Farr v. Head, 811 S.W.2d 894, 896-97 (Tenn. 1991); see also Dailey v. Southern Heel Co., 785 S.W.2d 344, 346 (Tenn. 1990).** The trial court erred in approving the settlement over the objection of the Second Injury Fund

The workers’ compensation statute, Tenn. Code Ann. §50-6-206 (Supp. 1996), recognizes that “the interested parties shall have the right to settle all matters of compensation between themselves,” but the statute also provides “but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the [trial] judge.” The statute further provides that the settlement will be approved by the judge only upon a finding that the employee is receiving substantially the benefits provided by the Workers’ Compensation Law.

The trial court’s finding in this case was based upon the assumption that the liability of the employer and the liability of the Second Injury Fund could be determined separately. As discussed below, the award against the Second Injury Fund, and the findings upon which that award is based, are invalid as attacked on appeal by the Second Injury Fund. Consequently, without an award against the Second Injury Fund, the employee, based on the findings by the trial court, has not received substantially the benefits provided by the Workers’ Compensation Law.

The result is that the judgments entered in the trial court are set aside, and the case is remanded for a new trial on all issues.” **Sweeten v. Trade Envelopes, Inc., and Larry Brinton, Jr., Dir., Second Injury Fund, ___ S.W.2d ___, (Tenn. 1996) (slip op. filed December 23, 1996, FOR PUBLICATION).**

We conclude likewise. The judgments entered by the trial court are set aside and the case is remanded for retrial on all issues. Because of the remand, we have not addressed the other issues raised on appeal.

Costs are assessed against the employee and the employer equally.

Leonard W. Martin, Judge

CONCUR:

Lyle Reid, Associate Justice

Joe C. Loser, Jr., Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

JAMES CLIFFORD TATUM,
Plaintiff/Appellee,

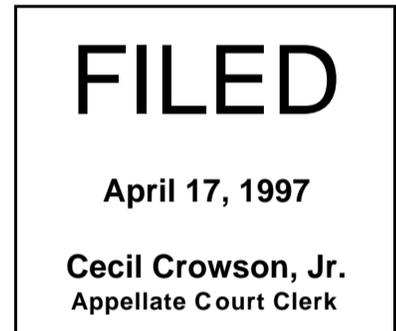
vs.

METHODIST HOSPITAL OF DYERSBURG,
Defendant/Appellee.

SUE ANN HEAD, DIRECTOR OF THE
DIVISION OF WORKERS' COMPENSATION,
TENNESSEE DEPARTMENT OF LABOR
SECOND INJURY FUND,

Defendant/Appellant.

) DYER CHANCERY
) NO. 95-C-408
)
) Hon. J. Steven Stafford,
) Chancellor
)
) NO. 02S01-9609-CH-00079
)
) JUDGMENTS OF TRIAL
) COURT SET ASIDE; CASE and
) REMANDED FOR NEW
) TRIAL.



JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the employee and the employer equally, for which execution may issue if necessary.

IT IS SO ORDERED this 17th day of April, 1997.

PER CURIAM

(Reid, J., not participating)